



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2005

Mr. Harold Willard
Police Legal Advisor
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2005-02858

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221354.

The City of Lubbock Police Department (the "department") received a request for information pertaining to four specified offense reports involving a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you indicate that you sought clarification from the requestor because the requested case numbers do not correspond with the case numbers of records held by the department. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You state, however, that the requestor was unable to provide the department with any additional information to clarify the request. We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted responsive offense reports for our review and raised an exception to disclosure for them, we consider the department to have made a good faith

effort to identify information that is responsive to the request, and we will address the applicability of your claimed exception to these submitted documents.

Next, we note that the submitted information includes an ST-3 accident report that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In this case, the requestor has not provided the department with the requisite information. Accordingly, the ST-3 accident report, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

We note that the submitted information also includes a search warrant affidavit. Search warrant affidavits are made public by statute if the search warrants have been executed. *See* Crim. Proc. Code art. 18.01(b). In this instance, the search warrant was executed. Therefore, the department must release the marked search warrant affidavit. The search warrant filed with a court is also public and must be released. Gov't Code § 552.022(a)(17) ("Information filed with a court is generally a matter of public record and may not be withheld from disclosure."); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992).

We further note that the submitted information includes arrest warrant and probable cause affidavits. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information." Crim. Proc. Code art. 15.26. Thus, if the arrest warrant and probable cause affidavits, which we have marked, were presented to a magistrate in support of the issuance of arrest warrants, the department must release these affidavits pursuant to article 15.26. However, to the extent that the affidavits were not so presented, they are not made public by article 15.26 and must be disposed of in accordance with the remainder of this ruling.

Section 552.101 of the Government Code incorporates the common law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). When a law enforcement agency is asked to compile information that

relates to a particular individual as a possible criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); Open Records Decision No. 616 at 2-3 (1993).

You assert that this request for information requires the department to compile law enforcement records of the named individual. We note, however, that this is not a request for unspecified information about a particular individual. Rather, the requestor seeks law enforcement records regarding specific incidents pertaining to a named individual. Such a request does not implicate the privacy interests of an individual. Therefore, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common law privacy.

We note, however, that the submitted documents contain information that is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from public disclosure information that relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). We have marked the Texas-issued motor vehicle record information that must be withheld under section 552.130 of the Government Code.

We also note that the submitted documents include checking account information that is subject to section 552.136 of the Government Code. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or

¹ This office will raise mandatory exceptions like sections 552.130 and 552.136 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Thus, the department must withhold the checking account numbers we have marked under section 552.136 of the Government Code.

In summary, the marked ST-3 accident report must be withheld under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The marked search warrant affidavit must be released under article 18.01(b) of the Code of Criminal Procedure. The marked search warrant must be released pursuant to section 552.022(a)(17) of the Government Code. The marked arrest warrant and probable cause affidavits must be released if they were presented to a magistrate in support of the issuance of arrest warrants. The department must withhold the marked Texas-issued motor vehicle record information under section 552.130 of the Government Code and the marked checking account numbers under section 552.136 of the Government Code. The remaining responsive information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 221354

Enc. Submitted documents

c: Ms. Rebecca A. Campbell
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(w/o enclosures)